

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

VINCENT LANHAM and EMILY  
LANHAM,

Plaintiffs,

v.

PFIZER, INC., a Delaware  
corporation, VALLEY HEALTH  
SYSTEMS, INC., a federally qualified  
health center, and JENIFER  
HADLEY, D.O.,

Defendants.

CIVIL ACTION NO.  
2:11-CV-00281-IPJ

(Case in other Court: West Virginia  
Southern, 2:10-cv-03157)

**DEFENDANT UNITED STATES OF AMERICA'S MOTION AND BRIEF  
TO SUBSTITUTE THE DEFENDANT VALLEY HEALTH SYSTEMS, INC.  
AND DEFENDANT JENIFER HADLEY, D.O, AND TO DISMISS FOR  
FAILURE TO FILE FTCA ADMINISTRATIVE CLAIMS**

COMES NOW the Defendant United States of America, by and through  
Joyce White Vance, United States Attorney for the Northern District of Alabama,  
and Jack Hood, Assistant U.S. Attorney, and respectfully submits its motion and  
brief for an Order substituting the United States as party Defendant in lieu and in  
place of Defendant Valley Health Systems, Inc., and Defendant Jennifer Hadley,  
D.O., and further dismissing the Defendant United States because Plaintiffs failed

to exhaust their administrative remedies by not filing administrative claims under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b) and 28 U.S.C. §§ 2671-80, thus depriving the Court of subject matter jurisdiction. In support of this motion, the Defendant United States submits the following:

1. This is a removed civil case which was subsequently transferred to this Court from the Southern District of West Virginia for Multidistrict Litigation purposes. (*See Clerk's Docket*, of record herein.)
2. Defendant Valley Health Systems, Inc., was at all relevant times in Plaintiffs' Complaint, deemed eligible for Federal Tort Claims Act malpractice coverage, and Dr. Jennifer Hadley was an employee of Valley Health Systems, Inc., at all said relevant times. (Declaration dated April 22, 2011, of James C. Anagnos, Attorney Advisor, Claims and Employment Law Branch, General Law Division, Office of the General Counsel, Department of Health and Human Services, Washington, D.C., attached hereto as Exhibit A).
3. No administrative claims pursuant to the requirements of the FTCA were filed by Plaintiffs. (*Id.*)
4. The Acting U.S. Attorney for the Northern District of Alabama has certified that Dr. Jennifer Hadley was at all relevant times acting within the scope of her employment as an employee of the United States for acts

or omissions performed in connection with the allegations in Plaintiffs' complaint. (See Certification of Scope of Employment, attached hereto as Exhibit B).

5. Pursuant to 42 U.S.C. § 233(c), the United States is due to be substituted as the party Defendant for the Defendants Valley Health Systems, Inc. and Dr. Jennifer Hadley.
6. Pursuant to 28 U.S.C. § 2675(a), Plaintiffs must exhaust their administrative remedies by filing administrative claims with the appropriate federal agency before commencing any Court action under the FTCA. The requirement is jurisdictional. *Lykins v. Pointer Inc.*, 725 F.2d 645, 646 (11th Cir. 1984); *Bush v. United States*, 703 F.2d 491, 494 (11th Cir. 1983); *Gregory v. Mitchell*, 634 F.2d 199, 203-04 (5th Cir. 1981). Moreover, this jurisdictional defect cannot be cured by filing an administrative claim after filing a complaint in court. *McNeil v. United States*, 508 U.S. 106 (1993).
7. A proposed Order substituting the United States as the party Defendant in the place of Valley Health Systems, Inc. and Dr. Jennifer Hadley, and further dismissing the United States for a failure by Plaintiffs to exhaust their administrative remedies by not filing claims under the FTCA, is attached hereto for the Court's convenience.

WHEREFORE, the Defendant United States moves the Court for an Order substituting the United States as Defendant in lieu and place of Defendant Valley Health Systems, Inc., and Defendant Jennifer Hadley, D.O., and further dismissing the Defendant United States because Plaintiffs failed to exhaust their administrative remedies by not filing administrative claims under the Federal Tort Claims Act.

Respectfully submitted,

JOYCE WHITE VANCE  
UNITED STATES ATTORNEY

**s/ Jack Hood**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties of record.

**s/ Jack Hood**  
Jack Hood  
Assistant United States Attorney